

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-77
Table of Allotments,) RM-8780
FM Broadcast Stations.)
(Hobbs, New Mexico))

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**COMMENTS & COUNTERPROPOSAL
OF
MTD, Inc.**

Comes now **MTD, Inc.** ("MTD"), by Counsel, pursuant to the *Notice of Proposed Rule Making (DA 96-406, released April 18, 1996)* ("NPRM"), and hereby respectfully submits these Comments & Counterproposal in the above-captioned Rule Making proceeding. In support hereof, MTD submits the following:

Background

1. According to the NPRM, Great Plains Broadcasting Co., Inc. ("GPB") has requested the allotment of Channel 279A to Hobbs, New Mexico, as that community's seventh aural and fifth local FM service. The NPRM indicates that the requested allotment can be made without the imposition of a site restriction; GPB states that it will apply for the channel, if allotted.

Counterproposal

2. MTD submits that the community of Tatum, New Mexico is more deserving of its first local aural FM service than Hobbs, New Mexico is of

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receiving another FM service to an already well-served community. Accordingly, MTD requests that Channel 296C be allotted to the community of Tatum, New Mexico, and that Channel 279C1 be substituted for Channel 296C1 at Jal, New Mexico, to accommodate the allotment of Channel 296C to Tatum.

3. The community of Tatum, New Mexico is more qualified and deserving to receive the allotment due to the following factors:

(a) Tatum does not have any local aural broadcast service, nor does it have any radio channels currently allotted to the community. On the other hand, Hobbs is "well served" since four commercial FM radio stations and two commercial AM radio stations are licensed to that community.

(b) Tatum is an incorporated village. Tatum elects its own local government -- a Mayor and Town Council. Tatum provides local water, sewer and ambulance service to its citizens. Moreover, Tatum is the home of many local social services and businesses that use the town name, such as Tatum Schools, Tatum Library, Tatum Senior Citizens, Tatum Towing & Storage, Tatum Well Service, Tatum Cash Grocery and the Tatum Clinic.¹

4. Generally if a community is incorporated or is listed in the U.S. Census, the community qualifies for FCC allotment purposes. *See generally, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1992); Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991).* The use of the Tatum town name by the local school system, library, and social services, and the fact that many businesses use the town name in

¹ This information was obtained from a Tatum fact sheet and telephone book obtained from the Tatum Municipal Office (Tele. No. 505-398-4633).

their business name, indicates a connection between the town's business, social and political cultures -- another indicia of community status. *See, Gretna, etc., supra.*

5. Where, as here, two qualified communities are competing for the allocation of a new radio channel, the FCC must choose between the conflicting proposals and base its decision on the following allotment criteria as set forth in *Revision of FM Policies and Procedures, supra*:

- (1) first full-time aural service;
- (2) second full-time aural service;
- (3) first local service; and
- (4) other public interest matters.

Based upon the above criteria, the community of Tatum is clearly more qualified and deserving of receiving its first local aural service than the community of Hobbs being awarded its seventh local aural service.

6. From a technical standpoint, the allotment of Channel 296C to Tatum, coupled with the substitution of Channel 279C1 for applied-for (but not yet granted) Channel 296C1 at Jal, New Mexico, fully complies with all applicable FCC Rules and Regulations. Attached hereto as **Exhibit No. 1** is a Technical Statement prepared by Jefferson G. Brock of Graham Brock, Inc., wherein it is demonstrated that Channel 296C can be allotted to Tatum at reference coordinates North Latitude 33 - 15 - 27, and West Longitude 103 - 27 - 22.

Statement of Interest

7. MTD hereby states that, in the event Channel 296C is allotted to

Tatum, New Mexico, it will file an FCC Form 301 Application with the Commission for the issuance of an FM Construction Permit for Channel 296C at Tatum, New Mexico.

Conclusion

WHEREFORE, the above premises considered, MTD respectfully requests that its Comments and Counterproposal be ACCEPTED and that the Commission AMEND §73.202 of the Commission's Rules, as follows:

<u>City & State</u>	<u>Existing</u>	<u>Proposed</u>
Hobbs, New Mexico	231C, 239C3 243A, 275C1	231C, 239C3 [no 243A, 275C1 change]
Tatum, New Mexico	None	296C
Jal, New Mexico	296C1	279C1

Respectfully submitted,

MTD, Inc.

By: 
Cary S. Tepper

Its Attorney

Booth, Freret & Imley, P.C.
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

(202) 296-9100

June 10, 1996

Exhibit No. 1

(Technical Statement of Jefferson G. Brock)

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

COMMENTS AND COUNTERPROPOSAL

MM DOCKET #96-77

MTD, INC.

ALLOT CHANNEL 296C

TATUM, NEW MEXICO

June 1996

TECHNICAL EXHIBIT

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COMMENTS AND COUNTERPROPOSAL
MM DOCKET #96-77
MTD, INC.
ALLOT CHANNEL 296C
TATUM, NEW MEXICO
June 1996

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of MTD, Inc. ("MTD"). These Comments and Counterproposal are being filed in response to the Notice of Proposal Rule Making, MM Docket #96-77, requesting the allotment of Channel 279A to Hobbs, New Mexico, as its fifth commercial FM channel. MTD herein proposes the allocation of Channel 296C at Tatum, New Mexico, as that community's first locally licensed FM facility. As indicated below, the allotment to Tatum requires the substitution of Channel 279C1 for Channel 296C1 at Jal, New Mexico. The allocation proposal at Jal on Channel 279C1 is mutually exclusive with the proposed allocation of Channel 279A at Hobbs, New Mexico, as proposed by Great Plains Broadcasting Company, Inc. ("Great Plains"). Great Plains is the petitioner in Docket #96-77.

REQUEST

2. Tatum, located in northern Lea County, New Mexico, is an incorporated community with a 1990 Census population of 768 persons. At present Tatum has no locally licensed AM or FM broadcast facilities. The allocation of Channel 296C to Tatum will provide this community with its first locally licensable FM station.

3. Channel 296C can be allocated to Tatum with a site restriction of 13.4 kilometers west-southwest of the community in order to avoid shortspacing KPOS-FM, Channel 297C2, Post, Texas, and KPWX, Channel 298C1, Clovis, New Mexico. The reference coordinates are North Latitude 33° 15' 27" and West Longitude 103° 27' 22". Exhibit #1 is a usable area map depicting where a transmitter site for Channel 296C at Tatum can be located to meet the Commission's minimum distance separation requirements. Exhibit #2 is a §73.207 spacing study from the proposed reference site demonstrating compliance with the Commission's minimum distance separation requirements. From the proposed reference site, a 3.16 mV/m contour will be delivered over all of Tatum. Both Exhibit #1 and Exhibit #2 assume that Channel 279C1 has been substituted for Channel 296C1 at Jal, New Mexico.

4. Channel 276C1 can be allocated to Jal, New Mexico, at the site specified in the pending application for Channel 269C1 (BPH-950404MA) filed by John W. Wiggins and the allocation site for Channel 296C1 at Jal. The reference coordinates are North Latitude 32° 25' 53" and West Longitude 103° 09' 08". As demonstrated on Exhibit #3, Channel 279C1 at the reference site meets the Commission's minimum distance separation requirements to all authorized, applied for or proposed facilities with the exception of KLZK, Channel 280A, Brownfield, Texas. However, in MM Docket #87-603 KLZK was ordered to Channel 282C2 and an application is pending for KLZK on Channel 282C2 at Brownfield. Therefore, the Channel 280A facilities at Brownfield are not considered an impediment to the allocation of Channel 279C1 at Jal, New Mexico.

5. MTD herein proposes the following amendment to the Commission's Table of FM

Allotments:

Tatum, New Mexico

<u>Present</u>	<u>Proposed</u>
None	296C

Jal, New Mexico

<u>Present</u>	<u>Proposed</u>
296C1	279C1

Hobbs, New Mexico

<u>Present</u>	<u>Proposed</u>
231C1, 239C3 243A, 275C1	231C1, 239C3 243A, 275C1

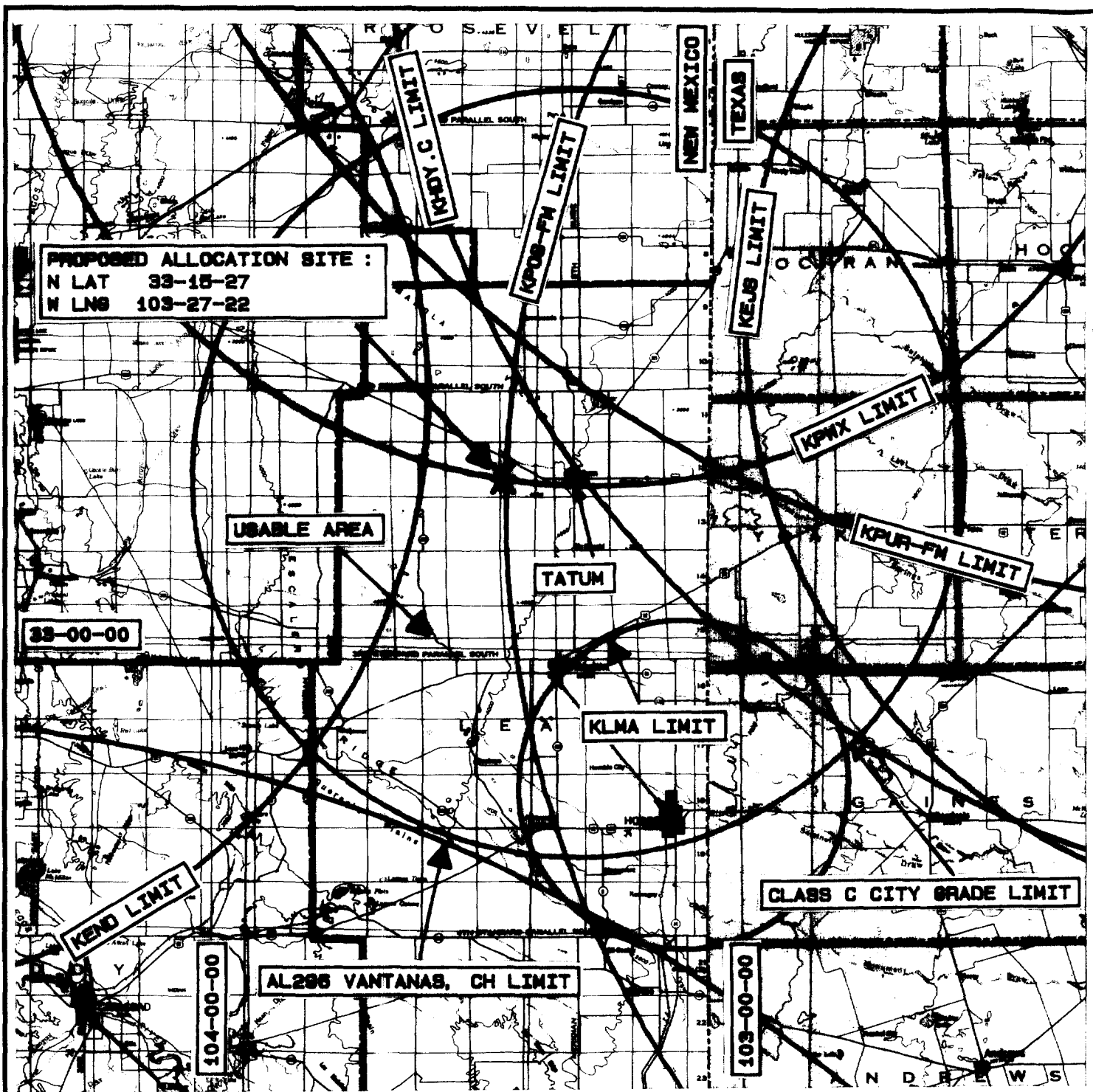
PUBLIC INTEREST ASPECTS

6. The allocation of Channel 296C at Tatum, New Mexico, will provide this community with its first locally licensed FM station. A C1 facility operating from the reference site will deliver 1.0 mV/m service to 75,955 persons in 26,479 square kilometers. The allocation of Channel 296C to Tatum provides that community with its first aural broadcast outlet. Hobbs, New Mexico, however, presently has four commercial FM stations: KZOR, Channel 231C1; KPER, Channel 239C3; KCMA, Channel 243A; and KIXN, Channel 275C1; as well as two AM stations: KHOB, 1390 kHz, and KKEL, 1480 kHz. With six existing stations, Hobbs, New Mexico, is well served.

7. When Channel 296C is allotted to Tatum, New Mexico, MTD will, on a timely basis, file an application seeking authority to construct a new FM station this channel.¹ If necessary, MTD will also reimburse the applicant for Channel 296C1 at Jal to make the necessary changes to Channel 279C1.

8. The foregoing Technical Statement was prepared on behalf of MTD, Inc., by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM allocations was extracted from the NTIA database as updated on May 31, 1996. We assume no liability for errors or omissions in that database which may be adverse to the requests herein.

1) MTD is the licensee of KWMW, Channel 286C, Maljamar, New Mexico. The site specified for allocation reference for Channel 296C at Tatum is in keeping with the Commission's policy to allocate the channel with the least site restriction from the community. However, MTD would propose to utilize Channel 296C at Tatum at the current site for KWMW at North Latitude 32° 52' 50" and West Longitude 103° 41' 01" and would propose to construct a tower capable of supporting a Class C facility on Channel 296C at Tatum.



CHANNEL 296C USABLE AREA

MAP IS A PHOTO REDUCED PORTION OF THE
1: 500,000 SCALE U.S.G.S. BASE MAP OF NEW
MEXICO AND 1: 1,000,000 SCALE U.S.G.S.
BASE MAP OF TEXAS.

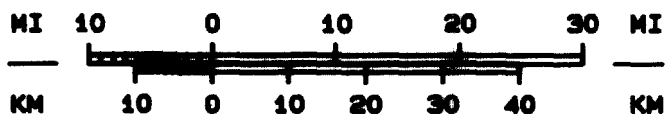


EXHIBIT #1

COMMENTS & COUNTERPROPOSAL
MTD, INC.

MM DOCKET # 96-77
ALLOT CHANNEL 296C
TATUM, NEW MEXICO

June 1996

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

**ALLOCATION STUDY FOR TATUM, NEW MEXICO
USING PROPOSED ALLOCATION SITE AS REFERENCE**

REFERENCE	CLASS C	DISPLAY DATES
33 15 27 N		DATA 05-31-96
103 27 22 W	Current rules spacings	SEARCH 06-04-96
----- CHANNEL 296 -107.1 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD296	296C	Tatum	NM	0.0	0.00	290.0	-290.00
AD	33 15 27	103 27 22	0.000 kW	OM	0.0	180.2	
M.T.D. Inc.							

* AP296	296C1	Jal	NM	162.7	95.93	270.0	-174.07
AP CN	32 25 53	103 09 08	100.000 kW	113M	59.6	167.8	
John H. Wiggins				BPH-950404MA		951010	
>One-Step Application From Channel 296A							

* ALOPEN	296C1	Jal	NM	162.7	95.93	270.0	-174.07
AL N	32 25 53	103 09 08	0.000 kW	OM	59.6	167.8	
>First Come/First Served Allotment on Channel 296A							
>Mexican Concurrence Required for Class Upgrade to C1							

KPOSFM	297C2	Post	TX	90.6	188.02	188.0	0.02
LI CN	33 13 28	101 26 21	50.000 kW	102M	116.9	116.8	
Boles-American Indian, A Part				BLH-900713KC			

KPWK	298C1	Clovis	NM	8.9	105.03	105.0	0.03
LI CN	34 11 34	103 16 44	100.000 kW	165M	65.3	65.3	
Taber Communications Corporation				BLH-820112AB			

KHDY.C	295C2	Plainview	TX	55.4	199.67	188.0	11.67
CP ZCN	34 15 45	101 40 05	38.000 kW	99M	124.1	116.8	
Rolling Plains Broadcasting				BPH-930224MA		961213	

KEND	293C1	Roswell	NM	277.2	118.79	105.0	13.79
LI CN	33 23 05	104 43 22	52.000 kW	41M	73.8	65.3	
Sheila Roe				BLH-900611KF			

KPURFM	296A	Canyon	TX	34.5	247.66	226.0	21.66
LI CN	35 05 09	101 54 52	3.000 kW	91M	153.9	140.5	
Westwind Broadcasting, Inc.				BLH-810121AH			

KPURFM	296A	Canyon	TX	34.5	247.72	226.0	21.72
CP CN	35 05 09	101 54 48	6.000 kW	96M	154.0	140.5	
Westwind Broadcasting, Inc.				BPH-940513IA		970319	

KLMA	243A	Hobbs	NM	149.7	62.66	29.0	33.66
LI CN	32 46 11	103 07 04	3.000 kW	91M	38.9	18.0	
Ojeda Broadcasting, Inc.				BLH-940207KB			

KEJS	293C2	Lubbock	TX	79.1	149.86	105.0	44.86
LI CN	33 30 08	101 52 20	34.000 kW	179M	93.1	65.3	
Barton Broadcasting Company				BLH-920323KC			

AL296	296C	Ventanas	CH	200.7	354.74	290.0	64.74
AL	30 15 56	104 45 37	0.000 kW	OM	220.5	180.2	

CHANNEL 296C ALLOCATION STUDY

* NOTE : STUDY ASSUMES CHANNEL 279C1
SUBSTITUTED FOR CHANNEL 296C1 AT
JAL, NEW MEXICO. SEE COMMENTS
FOR DETAILS.

EXHIBIT #2

**COMMENTS & COUNTERPROPOSAL
MTD, INC.
MM DOCKET # 96-77
ALLOT CHANNEL 296C
TATUM, NEW MEXICO
June 1996**

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

ALLOCATION STUDY FOR JAL, NEW MEXICO
USING CHANNEL 296C1 ALLOCATION SITE AS REFERENCE

REFERENCE	CLASS C1	DISPLAY DATES
32 25 53 N	Current rules spacings	DATA 05-31-96
103 09 08 W	CHANNEL 279 -103.7 MHz	SEARCH 06-04-96

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD279	279C1	Jal	NM	0.0	0.0	245.0	-245.00
AD	32 25 53	103 09 08	0.000 kw	OM	0.0	152.3	
Counterproposal - MM Docket #96-77							
* KLZK	280A	Brownfield	TX	44.1	115.49	133.0	-17.51
LI CN	33 10 30	102 17 20	3.000 kw	91M	71.8	82.7	
Southwestern Broadcasting Corp. BLH-841109LP							
>to Channel 282C2 - MM Docket #87-603							
KCDY	281C1	Carlsbad	NM	280.4	89.72	82.0	7.72
LI CN	32 34 22	104 05 32	100.000 kw	206M	55.8	51.0	
KAMQ, Inc. BLH-890714KC							
KCRSFM	277C1	Midland	TX	115.0	90.11	82.0	8.11
LI CN	32 05 11	102 17 11	100.000 kw	280M	56.0	51.0	
Midland Broadcasting Co. BLH-7078							
KCDD	279C	Hamlin	TX	82.7	291.06	270.0	21.06
LI CY	32 43 31	100 04 19	100.000 kw	300M	180.9	167.8	
B & D Communications, Inc. BLH-870206KC							
AD278	278A	Tahoka	TX	56.8	156.48	133.0	23.48
AD	33 11 34	101 44 44	0.000 kw	OM	97.3	82.7	
21st Century Radio Ventures RM-8634 950406							
>PRM-Site Restricted 5.6km (3.5 mi) Northeast							
KNMZ.C	279C1	Alamogordo	NM	288.7	270.21	245.0	25.21
CP CN	33 10 45	105 53 53	47.000 kw	408M	167.9	152.3	
Cottonwood Communications Corp. BPH-941027JC 951208							
ALOPEN	282C2	Brownfield	TX	45.4	121.36	79.0	42.36
AL N	33 11 39	102 13 23	0.000 kw	OM	75.4	49.1	
MM Docket #87-603							
>Reserved for KLZK							
KCRSFM	277C1	Midland	TX	130.5	104.67	82.0	22.67
LI CN	32 05 11	102 17 11	100.000 kw	280M	65.1	51.0	
Midland Broadcasting Co. BLH-7078							
KLZK.A	282C2	Brownfield	TX	48.6	121.54	79.0	42.54
AP CN	33 25 08	102 08 58	50.000 kw	142M	75.5	49.1	
Southwestern Broadcasting Corp. BPH-960508IA							
>From Channel 280A per MM Docket #87-603							

CHANNEL 279C1 ALLOCATION STUDY

* NOTE : KLZK WAS ORDERED TO CHANNEL 282C2 IN MM DOCKET #87-603. CHANNEL 280A IS NOT CONSIDERED AN IMPACT TO CHANNEL 279C1 AT JAL, NEW MEXICO.

EXHIBIT #3
COMMENTS & COUNTERPROPOSAL
MTD, INC.
MM DOCKET # 96-77
ALLOT CHANNEL 296C
TATUM, NEW MEXICO
June 1996

GRAHAM BROCK, INC.
BROADCAST TECHNICAL CONSULTANTS

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

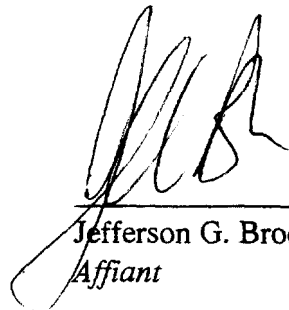
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by MTD, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 5th day of June, 1996.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 5th day of June, 1996*



Notary Public, State of Georgia
My Commission Expires: September 12, 1999

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 10th day of June, 1996, I have served a copy of the foregoing "**Comments & Counterproposal of MTD, Inc.**" first-class, postage-prepaid, on the following:

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2025 M Street, N.W.; Room 8010
Washington, D.C. 20554

Johnny P. Garcia, President
Great Plains Broadcasting Co., Inc.
P.O. Box 5131
Hobbs, NM 88240
(Petitioner)



Cary S. Tepper, Esq.

*/ indicates delivery by hand